

(916) 445-8485

October 17, 1980

This is in response to your September 22, 1980, letter to Mr. Glenn Rigby wherein you enclosed a copy of a May 14, 1977, Y _____ V _____ Lease With Option to Purchase and asked if the document is what it purports to be or if it is really a contract of sale. In the event that it is a contract of sale, you asked when the date of transfer occurred.

As you will recall, leases with options to purchase and contracts of sale were the subject of an August 19, 1980, letter from Mr. Rigby to you in another matter. And indicated therein, important considerations are phraseology and contract provisions taken together as a whole in light of surrounding circumstances, particularly, whether or not an "optionee" is under economic compulsion to exercise the "option".

More specifically, as indicated in the recent October 7, 1980, Letter to Assessor No. 80/147, Change in Ownership – Options, a "lease with option to purchase" may be a contract of sale?

"... Even though the potential purchaser (the optionee) has no legal obligation to purchase the property, there are circumstances where he is economically compelled to complete the transaction. This would occur whenever the optionee would realize a significant and immediate equity in the property merely by exercising the option. For example, ... in the case of a lease/purchase option, when the lessee is paying more than economic rent and the excess is being applied toward the purchase price, a sales contract would exist. Where significant equity is present, at the time the option is originated or it can be determined at the time of origination that equity will be established with certainty within a short period, the option is a form of sales agreement and revaluation should occur as of the date the option was created."

With respect to when the date of transfer occurred, we believe that it is the date of the completion of the property division (Paragraphs 2 and 3).

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

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